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EXAMINER
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RHEE, JANE J

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 01/23/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

AS-14

# Office Action Summary

Application No.

09/783,354

Applicant(s)

DANIEL ET AL.

Examiner

Jane J Rhee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-24,27-30 and 32-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24,27-30,32-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claim 1 recites the limitation ""adjacent tiles" in second line. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1-3,5-10,21,27,28,32,34-40, 45-46, 48 are rejected under 35 U.S.C. 102(b) as being anticipated by Eusemann (3875716).

Eusemann discloses carpet tiles comprising textile faces (col.1 line 7) that exhibit orthogonal ambiguity (figure 5 and 6) without pattern alignment between adjacent tiles (col. 2 lines 49-54). Eusemann discloses that the tiles have tufted faces or woven faces (col. 2 line 17). Eusemann discloses that each tile has a pattern comprising a background color and a first color difference from the background color (figure 5). Eusemann discloses that the background color and the first color have similar intensities (col. 2 lines 5-6). Eusemann discloses that the pattern comprises shapes, at least one of which shapes is formed by at least one straight line (figure 1). Eusemann discloses that the adjacent shapes comprise at least one common color (col. 1 lines 64-

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col. 2 line 6). Eusemann discloses that at least one straight line is oriented parallel to a carpet tile edge (figure 1). Eusemann discloses at least one shape comprises only the background color (figure 1 col. 61-68, col.2 lines 1-6). Eusemann discloses a floorcovering comprising at least two carpet tiles positioned side by side (abstract line 9). Eusemann discloses that the tiles are square (figure 1). Eusemann discloses that each tile comprises tile edges and each tile face comprises a pattern with at least one rectangular shape (figure 1). Eusemann discloses a carpet web having a width and a length and comprising a textile face (col. 1 line 7) having a pattern comprising a plurality of shapes formed by a plurality of colors (figure 1), wherein at least some adjacent shapes on the web comprise a common color and none of the shapes extends the full length or width of the web (figure 1), wherein the web is separable into carpet tiles so that the tiles cut from the web all comprise a common color (figure 2), and at least a portion of at least some of the plurality of shapes appear on each carpet tile cut from the web (figure 2), each of the which shapes having an edge that parallels at least one edge of the carpet tile on which it appears (figure 2). Eusemann discloses that the face is tufted (col. 2 line 17), and a plurality of colors comprises a first color and a second color (figure 1) wherein at least some of the plurality of shapes is formed by yarn tufts of the first color and the second color (col. 2 line 17). Eusemann discloses at least some of the plurality of shapes appearing on the carpet tile comprise straight edges (figure 1), and wherein at least one of the straight edges of each shape parallels a first pair of opposed edges of the carpet tile on which the shape appears and at least one of the straight edges of each shape parallels a second pair of opposed edges of the carpet tile

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on which the shape appears (figure 1). Eusemann discloses a plurality of carpet tiles positioned on a flooring surface (col. 2 lines 64-66). Eusemann discloses that the plurality of tiles can be positioned side-by-side on the flooring surface in any side-by-side or rotational orientation relative to each other with out the locations at which adjacent tiles abut being visually prominent (abstract line 9). Eusemann discloses carpet tiles having textile faces (col. 1 line 7) exhibiting orthogonal ambiguity and positioning the carpet tiles side-by-side on a flooring surface in any side-by-side or rotational orientation relative to each other (abstract line 9, col. 2 lines 49-66).

Eusemann discloses a method of producing the carpet tiles comprising forming carpet tiles having an orthogonally ambiguous pattern that does not require pattern alignment between adjacent tiles (col. 2 lines 49-54). Eusemann discloses that the carpet tiles are formed by printing the pattern on the tiles (col. 1 lines 61-68 col.2 lines 1-18).

Eusemann discloses that the carpet tiles having an appearance of continuity in which no tile looks out of place, each of the tiles having a textile face comprising means for rendering the position and orientation of the tiles irrelevant to the appearance of continuity across the assembly of tiles (col. 2 lines 49-54). Eusemann discloses an assembly of carpet tiles wherein each tile is rotationally oriented in the assembly and wherein the rotational orientation of at least one tile may be altered without disrupting the appearance of continuity (col. 2 lines 49-54).

***Claim Rejections - 35 USC § 103***

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 11-20, 22-24, 29-30, 33-44, 47 rejected under 35 U.S.C. 103(a) as being unpatentable over Eusemann in view of Hamilton et al. (5198277).

Eusemann discloses the carpet tile described above. Eusemann discloses that the pattern on at least two carpet tiles comprises shapes (figure 1) at least one shape on each of the two orthogonally ambiguous carpet tiles (figure 1). Eusemann discloses that at least two carpet tiles comprises shapes at least one shape on each of the two orthogonally ambiguous carpet tiles having a straight side (figure 1). Eusemann discloses that the adjacent shapes on each of the at least two carpet tiles comprises at least one common color (figure 1). Eusemann discloses a method wherein the pattern for the carpet web is designed by selecting a background color for the carpet web, using a plurality of colors, including the background color, to form shapes on the carpet web and designing and positioning the shapes on the carpet web so that at least one shape has at least one straight side parallel to an edge of the carpet web and adjacent shapes have at least one common color (col. 1 lines 61-col. 2 lines 1-6).

Eusemann fail to disclose that the tiles have fusion bonded faces. Eusemann fail to disclose that at least one shape comprises the background color and the first color. Eusemann fail to disclose that the pattern further comprises a second color different from the background color and the first color. Eusemann fail to disclose that the

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background color, the first color, and the second color have similar intensities.

Eusemann fail to disclose that at least one shape comprises only the background color and the second color. Eusemann fail to disclose that at least one shape comprises the background color, the first color and the second color. Eusemann fail to disclose that the patten further comprises a third color different from the background color, the first color and the second color. Eusemann fail to disclose that the background color, the first color, the second color, and the third color have similar intensities. Eusemann fail to disclose that at least one shape comprises only the background color and the third color. Eusemann fail to disclose that at least one shape comprises only the background color, the second color, and the third color. Eusemann fail to disclose that each tile comprises a pattern formed by a background color and at least two colors different from the background color, wherein the back ground color and at least one of the at least two colors are different from the background color are the same for the at least two orthogonally ambiguous carpet tiles. Eusemann fail to disclose that at least one rectangular shape comprises a shape edge parallel to at least one edge of the tile on which at least one rectangular shape appears. Eusemann fail to disclose at least one rectangular shape comprises shape edges parallel to a first pair of opposed edges of the tile on which at least one rectangular shape appears and shape edges parallel to a second pair of opposed edges of the tile on which at least one rectangular shape appears. Eusemann fail to disclose that some of the yarn tufts of the first color having a height greater than at least some of the yarn tufts of the second color proximate the tufts of the first color. Eusemann fail to disclose that the carpet tiles are formed by

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designing a pattern for a carpet web producing the carpet the carpet web with the pattern and cutting the carpet web into the tiles. Eusemann fail to disclose that the carpet web is produced using a tufting machine. Eusemann fail to disclose that each of the tiles comprises a pattern not identical to any other tile of the assembly.

Hamilton et al. teaches that the tile has a fusion-bonded face (col. 2 lines 36-59) for the purpose to provide a more desirable design (col. 3 lines 18-24). Hamilton et al. teaches that the carpet is produced using a tufting machine (col. 3 lines 26) for the purpose of obtaining a desired pattern (col. 3 lines 29). Hamilton et al. discloses that the carpet tiles are formed by designing a pattern for a carpet web producing the carpet the carpet web with the pattern and cutting the carpet web into the tiles for the purpose of obtaining a new and improved pattern tufted fusion bonded carpet material including a carpet tile (col. 2 lines 18-22).

Therefore, it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to provide Eusemann with a tile that has a fusion bonded face in order to provide a more desirable design (col. 3 lines 18-24) as taught by Hamilton et al.

Also, it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to provide Eusemann with a carpet that is produced using a tufting machine in order to obtain the desired pattern (col. 3 line 29) as taught by Hamilton et al.

It would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to provide Eusemann with carpet tiles that are formed



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by designing a pattern for a carpet web producing the carpet the carpet web with the pattern and cutting the carpet web into the tiles in order to obtain a new and improved pattern tufted fusion bonded carpet material including a carpet tile (col. 2 lines 18-22) as taught by Hamilton et al.

Furthermore, it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided Eusemann with at least one shape that comprises the background color and the first color, a second color different from the background color and the first color, the background color, the first color, and the second color having similar intensities, at least one shape comprises only the background color and the second color, at least one shape comprises the background color, the first color and the second color, a third color different from the background color, the first color and the second color, the background color, the first color, the second color, and the third color have similar intensities, at least one shape comprising only the background color and the third color, at least one shape comprises only the background color, the second color, and the third color, that each tile comprises a pattern formed by a background color and at least two colors different from the background color, wherein the background color and at least one of the at least two colors are different from the background color are the same for the at least two orthogonally ambiguous carpet tiles, since it is known in the art that colors may be modified to meet the consumers' desired pattern absence of showing unexpected results.

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It would have been obvious matter of design choice to provide Eusemann with at least one rectangular shape comprises a shape edge parallel to at least one edge of the tile on which at least one rectangular shape appears and at least one rectangular shape comprises shape edges parallel to a first pair of opposed edges of the tile on which at least one rectangular shape appears and shape edges parallel to a second pair of opposed edges of the tile on which at least one rectangular shape appears, since such a modification would have involved a mere change in the shape of the component. A change in shape is generally recognized as being within the level of ordinary skill in the art. In re Dailey, 149 USPQ 47 (CCPA 1976).

It would have been an obvious matter of design choice to provide Eusemann with some of the yarn tufts of the first color having a height greater than at least some of the yarn tufts of the second color proximate the tufts of the first color and for each of the tiles to comprise a pattern not identical to any other tile of the assembly since it is known in the art that size and colors may be modified to meet the consumer's desired pattern absence of showing unexpected results.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-24,27-30,32-48 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jane J Rhee whose telephone number is 703-605-4959. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 703-308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

*Jane J Rhee*  
1/15/03

*Harold Pyon*  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1/12

1/21/03